IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No.845 of 2000.

Date of decision:29.12.2005

Ex.Naik Munshi Ram. **…..Petitioner.**

Versus

Union of India & Others. **……Respondents.**

Coram

The Hon'ble Mr.Justice K C Sood,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.C.B. Singh, Advocate.**

For the Respondents: **Mr.Anup Rattan, Central Government Counsel**

K C SOOD,J.(Oral).

Petitioner Munshi Ram was enrolled in the Army (Dogra Regiment) in February, 1980. He served in various capacities. In December, 1996 he was on casual leave. On 12th December, 1996 when he was travelling in a bus he sustained head injury. He was medically examined and graded to the low medical category CEE (Permanent) and discharged from the Army.

The grievance of the petitioner is that inspite of several representations he has not been granted disability pension. His claim for disability pension was rejected on the ground that he was not on duty at the material time of sustaining the injury in question under Rule 12 of Revised Entitlement Rules, 1982. His statutory appeal was rejected on untenable grounds.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

Aggrieved, the petitioner is in this petition under Article 226 of the Constitution of India.

The stand of the Union of India in its return is that the injury sustained by the petitioner for which he was boarded out of the military service is not relatable to military service.

Heard Mr.C.B. Singh, learned counsel for the petitioner and Mr.Anup Rattan, learned Central Government Counsel for the respondents.

It is now settled position in law that when an army personnel is on casual leave he does not cease to be on duty.

A Division Bench of this Court to which I was party, in ***Sunpa Devi vs. Union of India and Another, Latest HLJ 2002 (HP)-(DB) 959,*** relying upon several decisions including that of the Supreme Court, took a view that even if an army personnel sustained injury while travelling in public transport or otherwise during casual leave such an army personnel would be on duty and would be entitled to disability pension.

In ***Madan Singh Shekhawat vs. Union of India and Others, (1999)6 SCC 459,*** the appellant army personnel was discharged from the army on medical grounds which arose from an accident on October 1, 1984 in which he was involved while alighting from a train at a Railway Station. The appellant's right hand was amputated four inches below from the joint of collar bone. At the relevant time he was travelling from Jodhpur to his home station on authorised casual leave. The appellant

applied for disability pension under the relevant rules. His application was rejected on the ground that at the time of accident the appellant was not on military service. Aggrieved, he filed a writ petition before the High Court which was dismissed on the ground that the petitioner was not entitled to disability pension as at the time of accident, he was travelling at his own expenses, therefore, the relevant rule did not permit the grant of disability pension. His appeal before the Division Bench was also dismissed. The appellant approached the Apex Court by Special Leave Petition. The Apex Court held that as there was no allegation against the appellant that he was travelling, on the fateful day, unauthorisedly, therefore, he was entitled to the benefit of the disability pension as provided under the rule.

It is not disputed before me that the petitioner was on duty on the fateful day. However, Mr.Rattan contends that the injury sustained by the petitioner is not attributable to his military service. The argument has no foundation.

Letter of the Ministry of Defence addressed to the petitioner rejecting his appeal for the grant of disability pension Annexure P/5 clearly shows that the disability pension was denied to him only on the ground that he was not on duty at the material time. The relevant para of the letter reads:-

> "3.On perusal of your Medical/Service documents, it has been found that you had sustained injury while you were on casual leave and travelling in a Bus on 11.12.96.

> As per injury report and Court of Inquiry proceedings, you were granted Casual leave from 9.12.96 to 18.12.96. You sustained head injury on 12.12.96 apparently due to recurrence of seizure of which you had past history during your leave at your home, you were on casual at home with effect from 9.12.96 to 18.12.96 away from your duty station. You were not on duty at the material time of sustaining injury as defined in Rule 12 of Revised Entitlement Rules, 1982. Hence, your disablement in such circumstances is not related to your duties of Military Service".
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> ***(emphasis given)***

I have already said that it is now well settled and no longer res integra that an army personnel when on casual leave is deemed to be on military duty and therefore the arguments of the learned Central Government Counsel that the injury sustained by the petitioner is not relatable to the army duty has no foundation.

No other point is urged before me.

In result, the petition is allowed. The respondents are directed to release the disability pension to the petitioner as admissible to him under the Rules and Regulations within six weeks from today and reimburse the arrears within a further period of two weeks, failing which the petitioner shall be entitled to interest at the rate of 12% per annum from the date of his retirement till the entire arrears are paid.

No costs.

December 29, 2005. **(K C Sood)**
(aks) **Judge.**